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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 246

HERMAN MOSES, ROBERT ALLEN, JR., LARRY MAURICE, LAWRENCE JERRY, DONALD JERRY, STAN MOSES, BURT MOSES, EDWIN B. DANIELS, HOWARD MOSES, BETTY GOUDY, HENRY KING GEORGE, WALTER ALLEN, ANDY DOMINICK, ARCHIE LEBEHAN, CECIL MOSES, and the MUCKLESHOOT TRIBE OF INDIANS,
Appellants,

v.

THE STATE OF WASHINGTON, THE DEPARTMENT OF FISHERIES, and THE DEPARTMENT OF GAME,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

SUPPLEMENTAL JURISDICTIONAL STATEMENT

Since the filing of the Jurisdictional Statement herein, the Secretary of the Interior has at long last asserted federal jurisdiction over off-reservation fishing rights by way of his regulations issued July 10, 1967, and filed with the Federal Register on July 14, 1967, F.R. Doc. 67-8185, and published in Federal Register, Vol. 32, No. 136, page

10433 *et seq.*, pertinent parts of which follow this statement. Instead of the regulations printed in the appendix of the Jurisdictional Statement at page A-59, where the Secretary merely informed the world he was thinking of issuing regulations, the Secretary has now ripened such thought into a direct recognition of his power. Basically, the Secretary, in his regulations, has offered to regulate off-reservation fishing rights on the invitation of an interested party, for example, the tribe involved or the governor of the state. Thereafter, specific regulations will be promulgated for a specific area for the management of the fishery resource in the light of proper conservation and harvesting.

The appellant tribe has complied with the regulation by requesting the Secretary for such specific regulations. The request is printed following this Statement.

On a plenary hearing we would assert that the regulating of off-reservation fishing rights encompasses the power to so regulate.

Respectfully submitted,

FREDERICK PAUL
Counsel for Appellants

FREDERICK POST
Of Counsel

RESOLUTION

WHEREAS, We, the Muckleshoot Tribe of Indians, and its constituent tribes, including the Smalh-kamish, Skope-ahmish, and St-kah-mish, wholeheartedly approve of the conservation of the salmon fisheries, both on and off the reservation; and

WHEREAS, we ceded to the United States large areas of our lands, reserving our fishing rights; and

WHEREAS, the State of Washington has carried on a relentless campaign, first to prevent our fishing at all and lately to deny all treaty rights to us; and

WHEREAS, we think it morally wrong that the State permit the commercial and sports fishermen to intercept the salmon which would normally spawn in our old places, requiring us to carry the full burden of conservation; and

WHEREAS, the Secretary of the Interior has at long last offered to regulate our off-reservation fishing rights (as well as other tribes'); and

WHEREAS, we have been terribly hurt by the conduct of the State of Washington and we expect only blind determination from her to extinguish our rights in our beloved salmon, no matter what, in any way she can; and

WHEREAS, we express our confidence in the fairness of the Secretary of the Interior, now, therefore,

BE IT RESOLVED at a joint meeting of the members of the Muckleshoot Tribe of Indians and its tribal council that the tribe wholeheartedly embrace regulation by the Secretary of the Interior of its off-reservation fishing rights and that its officers be authorized to do any and every act to accomplish the same and to cooperate with the Secretary of the Interior in the promulgation of specific regulations for the management of the off-reservation fishing rights of the Muckleshoot Tribe of Indians.

DATED this 14th day of August, 1967.

S/ BERTHA MCJOE

CHAIRMAN, MUCKLESHOOT TRIBAL COUNCIL

S/ ALETHA WHITE

SECRETARY, MUCKLESHOOT TRIBAL COUNCIL

Excerpts from Title 25, Federal Register, Vol. 32, No. 136, page 10433, *et seq.*

"Sec. 256.1 Purpose.

(a) The purposes of these regulations (Part 256) are:

(1) To assist in protecting the off-reservation non-exclusive fishing rights which are secured to certain Indian tribes by their treaties with the United States;

(2) To promote the proper management, conservation and protection of fisheries resources which are subject to such treaties of the United States;

(3) To provide for the determination of restrictions on the manner of exercising nonexclusive fishing privileges under rights secured to Indian tribes by such treaties of the United States necessary for conservation of the fisheries resources;

(4) To assist in the orderly administration of Indian Affairs;

(5) To encourage consultation and cooperation between the states and Indian tribes in the management and improvement of fisheries resources affected by such treaties;

(6) To assist the states in enforcing their laws and regulations for the management and conservation of fisheries resources in a manner compatible with the treaties of the United States which are applicable to such resources.

(b) The conservation regulations of this Part 256 are found to be necessary to assure that the nonexclusive rights secured to certain Indian tribes by treaties of the United States to fish at usual and accustomed places outside the boundaries of an Indian reservation shall be protected and preserved for the benefit of present and future members of such tribes in a manner consistent with the nonexclusive character of such rights. Any exercise of an Indian off-reservation treaty fishing right shall be in accordance with this Part 256 and any applicable area regulations issued hereunder.

"Sec. 256.2 Area Regulations.

(a) The Secretary of the Interior may upon request of an Indian tribe, request of a State Governor, or upon his own motion, and upon finding that Federal regulation of Indian fishing in any waters in which Indians have a treaty-secured nonexclusive

fishing right is necessary to assure the conservation and wise utilization of the fishery resources for the present and future use and enjoyment of the Indians and other persons entitled thereto, promulgate regulations to govern the exercise of such treaty-secured fishing right in such waters for the purpose of preventing, in conjunction with appropriate State conservation laws and regulations governing fishing by persons not fishing under treaty rights, the deterioration of the fishery resources.

(b) In formulating such regulations the Secretary of the Interior may incorporate such State laws or regulations, or such tribal regulations as have been approved by the Commissioner of Indian Affairs, as he finds to be consistent with the Indians' rights under the Treaty and the conservation of the fishery resources.

• • •

Sec. 256.7 Savings provisions.

Nothing in this Part 256 shall be deemed to:

• • •

(b) Deprive any Indian tribe, band, or group of any right which may be secured it by any treaty or other law of the United States;

• • •

(d) Enlarge the right, privilege, or immunity of any person to engage in any fishing activity beyond that granted or reserved by treaty with the United States;

(e) Exempt any person or any fishing gear, equipment, boat, vehicle, fish or fish products, or other property from the requirements of any law or regulation pertaining to safety, obstruction of navigable waters, national defense, security of public property, pollution, health and sanitation, or registration of boats or vehicles;"